Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-855

HELEN A. COHEN,

Petitioner,

vs.

ILLINOIS INSTITUTION OF TECHNOLOGY, AN ILLINOIS NOT-FOR-PROFIT CORPORATION, JAMES J. BROPHY, JOHN T. RETTALIATA, AND MAYNARD P. VENEMA,

Respondents.

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

On January 8, 1979, this Court granted its writ of certiorari in No. 78-753, opinion below reported as *Novotny* v. *Great American Savings & Loan Association*, 584 F. 2d 1235 (3rd Cir. 1978) (*en banc*). The issues in *Novotny* are closely related to the third Question Presented in the petition in the instant case.

The *Novotny* court applied 42 U. S. C. § 1985(3) to gender-based discrimination by private corporate officials. It held, *inter alia*, that § 1985(3) "protects against conspiracies motivated by discriminatory animus against women" (*id.* at 1262), and it found constitutional authority for such application from the Commerce Clause by Title VII of the Civil Rights Act of 1964 (*ibid.*).

Petitioner in the instant case, likewise suing private corporate officials under § 1985(3) for discrimination against women, does not urge a constitutional basis through Title VII. (The statute was inapplicable at the time of the original discrimination, App. B, at 9a.) She does, however, rely on Section 5 of the Fourteenth Amendment, an issue which to the *Novotny* court was "not necessary at this time to resolve" (*id.* at 1255, and n.101). Petitioner had also urged alternative Fourteenth Amendment ties, first by reason of 42 U. S. C. § 1983 State action, and second by reason of the non-discrimination provision of the State constitution (Pet. Cert. p. 3). While these alternatives were not discussed in any of the *Cohen* decisions or made the subject of a Question Presented, they are "subsidiary questions fairly comprised therein" within the meaning of Rule 23(1)(c).

The *Novotny* decision, published in the December 18, 1978 Federal Reporter (and therefore not discussed in the Petition in the instant case), makes frequent reference to inter-circuit conflicts regarding the scope of § 1985(3), and repeatedly discusses *Cohen I.* (See, for example, footnotes 36, 48, 67, 125, and, especially, 101.)

We suggest, therefore, the appropriateness of granting certiorari in this case and combining this case with *Novotny* for the purposes of argument pursuant to Rule 43(5).

Respectfully submitted,

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